

Michael S. Agruss (SBN: 259567)  
AGRUSS LAW FIRM, LLC  
4809 N. Ravenswood Ave., Suite 419  
Chicago, IL 60640  
Tel: 312-224-4695  
Fax: 312-253-4451  
michael@agrusslawfirm.com  
Attorney for Plaintiff,  
CARLITA SMITH

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

CARLITA SMITH,  
  
Plaintiff,  
  
v.

STELLAR RECOVERY, INC.,  
  
Defendant.

Case No.: '16CV1441 LAB KSC

**PLAINTIFF'S COMPLAINT**

**PLAINTIFF'S COMPLAINT**

Plaintiff, CARLITA SMITH ("Plaintiff"), through her attorneys, AGRUSS LAW FIRM, LLC,  
alleges the following against Defendant, STELLAR RECOVERY, INC. ("Defendant"):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA").
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. ("RFDCPA").

**JURISDICTION AND VENUE**

3. This Court has jurisdiction under 28 U.S.C. §§1331, 1337 and 1367 and 15 U.S.C. §1692k (FDCPA).
4. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy” and 28 U.S.C. §1367 grants this court supplemental jurisdiction over the state claims contained within.
5. Venue and personal jurisdiction in this District are proper because Defendant does or transacts business within this District, and a material portion of the events at issue occurred in this District.

**PARTIES**

6. Plaintiff is a natural person residing in Spring Valley, San Diego County, California.
7. Plaintiff is a consumer as that term is defined by 15 U.S.C. §1692a(3).
8. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
9. Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. §1692a(5) and Cal. Civ. Code § 1788.2(h).
10. Defendant is a debt collector as that term is defined by 15 U.S.C. §1692a(6) and Cal. Civ. Code §1788.2(c).
11. Within the last year, Defendant attempted to collect a consumer debt from Plaintiff.
12. Defendant is a collection agency located in Kalispell, Flathead County, Montana.
13. Defendant is a business entity engaged in the collection of debt within the State of California.
14. Defendant’s business includes, but is not limited to, collecting on unpaid, outstanding account

1 balances.

2 15. When an unpaid, outstanding account is placed with Defendant it is assigned a file number.

3 16. The principal purpose of Defendant's business is the collection of debts allegedly owed to third  
4 parties.

5 17. Defendant regularly collects, or attempts to collect, debts allegedly owed to third parties.

6 18. During the course of its attempts to collect debts allegedly owed to third parties, Defendant  
7 sends to alleged debtors bills, statements, and/or other correspondence, via the mail and/or  
8 electronic mail, and initiates contact with alleged debtors via various means of  
9 telecommunication, such as by telephone and facsimile.

10 19. Defendant acted through its agents, employees, officers, members, directors, heirs, successors,  
11 assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

12  
13  
14 **FACTUAL ALLEGATIONS**

15 20. Defendant is attempting to collect an alleged consumer debt from Plaintiff.

16 21. Plaintiff's alleged debt owed arises from transactions for personal, family, and household  
17 purposes.

18 22. In or around October 2015, Defendant began placing collection calls to Plaintiff's home  
19 telephone number, ending in 1883, in an attempt to collect the alleged debt.

20 23. Defendant places calls to Plaintiff from 619-600-0310, which is one of Defendant's telephone  
21 numbers.

22 24. Defendant calls Plaintiff at an annoying and harassing rate, calling Plaintiff at least once every  
23 day.

24 25. On or about October 1, 2015, Plaintiff answered one of Defendant's collection calls and spoke  
25 with one of Defendant's collectors.

1 26. During the aforementioned conversation, Defendant asked to speak with Robert Storey.

2 27. During the aforementioned conversation, Plaintiff told Defendant that she was not the  
3 individual they were looking for.

4 28. During the aforementioned conversation, Plaintiff told Defendant to stop calling her.

5 29. Despite Plaintiff informing Defendant that they were calling the wrong person and her request  
6 to stop calling, Defendant continued to place repeated incessant collection calls to Plaintiff on  
7 her home telephone number.  
8

9 30. The natural consequences of Defendant's statements and actions was to produce an unpleasant  
10 and/or hostile situation between Defendant and Plaintiff.  
11

12 31. The natural consequences of Defendant's statements and actions was to cause Plaintiff mental  
13 distress.

14 **COUNT I**  
15 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

16 32. Defendant violated the FDCPA based on the following:

17 a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural  
18 consequences of which is to harass, oppress, and abuse Plaintiff in connection with the  
19 collection of an alleged debt when Defendant continued to place collection calls to  
20 Plaintiff after Plaintiff informed Defendant it was calling the wrong person and  
21 requested that Defendant stop calling her; and  
22

23 b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring or engaging  
24 any person in telephone conversation repeatedly or continuously with intent to annoy,  
25 abuse, or harass any person at the called number when Defendant continued to place  
26 collection calls to Plaintiff after Plaintiff informed Defendant it was calling the wrong  
27 person and requested that Defendant stop calling her.  
28

1 WHEREFORE, Plaintiff, CARLITA SMITH, respectfully requests judgment be entered against  
2 Defendant, STELLAR RECOVERY, INC., for the following:

3 33. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C.  
4 §1692k;

5 34. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15  
6 U.S.C. §1692k; and  
7

8 35. Any other relief that this Honorable Court deems appropriate.

9 **COUNT II**  
10 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES**  
11 **ACT**

12 36. Plaintiff repeats and re-alleges paragraphs 1-31 of Plaintiff's Complaint as the allegations in  
13 Count II of Plaintiff's Complaint.

14 37. Defendant violated the RFDCPA based on the following:

- 15 a. Defendant violated the §1788.11(d) by causing a telephone to ring repeatedly or  
16 continuously to annoy the person called when Defendant continued to place collection  
17 calls to Plaintiff after Plaintiff that Defendant stop calling her; and  
18  
19 b. Defendant violated the §1788.11(e) by communicating by telephone with the debtor  
20 with such frequency as to be unreasonable and to constitute harassment to the debtor  
21 under the circumstances when Defendant continued to place collection calls to Plaintiff  
22 after Plaintiff told Defendant it was calling the wrong person and told Defendant to stop  
23 calling her; and  
24  
25 c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply  
26 with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq. as  
27 detailed above in Count I.  
28

1           WHEREFORE, Plaintiff, CARLITA SMITH, respectfully requests judgment be entered against  
2 Defendant, STELLAR RECOVERY, INC., for the following:

3           38. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act,  
4 Cal. Civ. Code §1788.30(b);

5           39. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices  
6 Act, Cal. Civ Code § 1788.30(c); and

7           40. Any other relief that this Honorable Court deems appropriate.  
8

9  
10  
11   RESPECTFULLY SUBMITTED,

12  
13 DATED: June 10, 2016

AGRUS LAW FIRM, LLC

14  
15 By: /s/ Michael S. Agruss

16 Michael S. Agruss  
17 Attorney for Plaintiff  
18 CARLITA SMITH  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28